

**NIKOLAI & MERSEREAU, P.A.
900 SECOND AVENUE SOUTH, SUITE 820
MINNEAPOLIS, MN, U.S.A. 55402-3325
Telephone: (612) 339-7461 Facsimile: (612) 349-6556**

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NIKOLAI & MERSEREAU, P.A., 900 Second Ave. S., #820, Minneapolis, MN 55402, U.S.A.

DATE: October 26, 2004 Time: 3:15 p.m. TOTAL PAGES incl. cover sheet: 18

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October 26, 2004

Our Docket No. 980457.ORI

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re App : Rodney W. Salo et al.
 S.N. : 09/545,536 : Art Unit 3762
 Filed : April 7, 2000 : Examiner Mark Bockelman
 For : CARDIAC RHYTHM MANAGEMENT
 SYSTEM WITH OPTIMIZATION OF
 CARDIAC PERFORMANCE USING HEART RATE

Mailstop AF
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Response Under Rule 37 C.F.R. 1.116 in reply to the Final Office Action dated August 26, 2004 and a Terminal Disclaimer in the above-identified patent application.

The Commissioner is hereby authorized to charge any fees listed in 37 CFR 1.16 and 1.17 which may be required by this paper or credit any overpayment to Deposit Account No. 08-1265.

Yours very truly,

NIKOLAI & MERSEREAU, P.A.

A handwritten signature in black ink, appearing to read 'C. G. Mersereau'.

C. G. Mersereau

CGM/bld

Enclosures

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OCT 26 2004

PATENT APPLICATION

Our Docket No. 980457.0RI

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SYSTEM WITH OPTIMIZATION OF
CARDIAC PERFORMANCE USING HEART RATE

AMENDMENT UNDER 37 CFR 1.116

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is submitted in response to a Final Official Action dated August 26, 2004 in the subject application. That Action carried a shortened-statutory period for response of three months, set to expire on November 26, 2004. This paper is being submitted within two months of the mailing date of that Action.

It is noted that pending claims 1-4, 9-10 and 13-19 stand as being provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-40 of copending Application No. 09/734,282. It is noted that Serial No. 09/734,282 has now issued as U.S. Patent 6,708,061, which issued on March 16, 2004.

Accordingly, applicants submit herewith a Terminal Disclaimer with respect to Patent 6,708,061. A listing of the claims with present status is also being provided.

It is believed that the Terminal Disclaimer presented herewith places the present claims in condition for allowance and acceptance of the Terminal Disclaimer and allowance of the claims is respectfully requested.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.



C. G. Mersereau
Registration No. 26,205
Attorneys for Applicant(s)
820 International Centre
900 Second Avenue South
Minneapolis, MN 55402
(612) 339-7461

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